IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 209 of 2006

JAGDISH

V/S

CHANDMAL

Mr. HIMANSHU MAHESHWARI, for the appellant / petitioner

Date of Order : 7.12.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant and perused the impugned judgment.

It is contended that in the plaint all that has been alleged by the plaintiff is that from 1.3.1994 to 30.11.1994 the plaintiff has not paid rent for 9 months and has committed second default. According to the learned counsel, there is no pleading about the rent having neither been paid nor been tendered and therefore, the decree for eviction on the ground of default could not be passed.

Second submission made is that the learned courts below have concluded that the defendant has committed default from 1.3.1994 to 30.11.1994 while in the previous suit, the suit was decided on 31.3.1994, and the defendant was given benefit of first default, and therefore, the rent

could be said to be due from 1.4.1994, and since on 10.10.1994 the defendant had remitted the rent by money-order, it cannot be said that the defendant has committed default in payment of rent of six months.

I have considered the submissions, so far the first submission is concerned, admittedly, the present suit is based on the ground of second default, and in my view the pleadings contained in the plaint are sufficient, and make out the ground of default. In the written statement no objection was taken about the pleading not constituting the ground of default, so as to render the suit not maintainable, and the objection had been raised first time before the appellate Court.

I may straight way in this regard refer to the judgment of Hon'ble the Supreme Court in Virendra Kashinath Ravat Vs. Vinayak N. Joshi, reported in 1999(1) CCC-392, wherein the pleadings taken in the plaint was "The said premises have been unlawfully sublet to the third defendant who is at present in unlawful occupation of the said premises.....". It was also pleaded by amendment "The plaintiffs say that pending the suit the defendants have or any of them has inducted in the suit premises Defendant Nos. 4 and 5 unlawfully". Learned Single Judge had treated the aforesaid pleading as insufficient to make out a case for subletting. It was noticed by the Hon'ble Supreme

Court, that this was not a point considered by or even raised before the two fact finding forums, and Order 6 Rule 5 C.P.C. Confers powers on the Court to order a party to make a further statement, or even a better statement, or further and better particulars of any matter already mentioned in the pleading. It was also held that this provision indicates that no suit shall be dismissed, merely on the ground, that more particulars are not stated in the pleading. It was also observed that if the contesting defendant had raised objection that the pleading were scanty perhaps the plaintiff would have further elaborated. Then, the provisions of Order 6 Rule 2 were examined, and it was held, that the object is two fold. First being to afford the other side intimation regarding the particular facts of his case, so that they may be met by the other side, and the other is to enable the court to determine what is really the issue between the parties. Then, reference was made to the two other judgments of Hon'ble the Supreme Court, being that in Manphul Singh Vs. Surinder Singh reported in AIR 1973 SC-2158, and M/s. Ganesh Trading Co. Vs. Moji Ram reported in AIR 1978 SC-484, and then in para-18 it was held as under:-

> "18. We have no doubt that appellant by making the averments in paragraph 5-A in the plaint, as quoted above, afforded sufficient notice to the other side that he was putting forth a case that first respondent was inducted into the premises by the tenant and such induction is unlawful. Appellant could not make further elaboration as to who is the legal heir of the original

> tenant and hence appellant adopted the cautious approach without committing themselves as to who, among the rival claimants to the legal heir-ship of Ms. Shanta Sabnis is responsible for such unlawful act. We are, therefore, of the clear view that learned Single Judge ought not have disturbed the concurrent findings on such an erroneous consideration."

Then, in Govind Prasad Vs. Vijay Singh, reported in 2006(2) DNJ(Raj.)-2017, which again was a case of subletting, the pleading did not contain the averment about "that the suit premises having been let out without permission of the landlord", and the argument was raised, that unless this fact constituting cause of action is pleaded, the suit is liable to be dismissed for non-disclosure of cause of action, and various judgments of Hon'ble the Supreme Court were cited in support of the contention. The learned Single Judge of this Court examined this contention, and held in para-18 and 19 as under:-

> "18....Such fine ingenious legal technical plea may demonstrate good legal skill of expert in legal profession but in this case it is too late. If objection about lack of pleading is accepted at latter stage of suit or at first appellate stage then that will be benefit to those persons who by their conduct have clearly shown that they understood the allegations against them, contested it and they failed in trial Court and thereafter they with the help of law expert (or even by their own study of law) came to know that the pleas which they understood and contested, in fact, were not understood by them.
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> 19. Even if it is choice of the defendant to contest the suit on question of fact or on question of law or on both, question of law and question of fact then he legal plea dependent upon fact cannot be allowed to be raised when not raised in time. This principle is required to be followed with more rigour when not taking of such objection in time deprives other party

> from correcting pleadings, if permissible by law. The allegation of sub-letting against tenant with claim of decree of eviction of tenant by all its implication is an allegation of landlord that the premises has been sub-let by the tenant without permission of the landlord and cannot be read to mean that the premises has been let-out with the consent of the landlord expressly or impliedly still the landlord is seeking eviction of the tenant on the ground of sub-letting. This Court has no hesitation in holding that in the suit claiming relief of eviction of tenant on the allegation of sub-letting by the tenant without specific mention of the words "without consent of landlord", the plea of "without permission of the landlord" is inherent in it, because of the plain and simple reason that which sub-letting is ground for eviction is given in the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. Some of the facts are inherent, if plea is read with reference to law applicable. "

The learned Single Judge also held that the contention does not help the appellant in view of several reasons quoted in para-26 as under:-

> "26. All the judgments relied upon by the learned counsel for the appellants cannot help to the appellants in view of several reasons like (1) not objecting to the lack of pleading by the defendant in time, (2) the specific issue has been framed by the trial Court incorporating the actual ground of eviction with the phraseology which according to the defendant should have been in the plaint, (3) defendant got full opportunity to contest the allegation of sub-letting during trial and he availed it, (4) no prejudice has been caused to the defendant because not mentioning of exact phraseology as given in the Section, (5) defect, if it was there, it was curable by amending the plaint, (6) if there was defect in pleading, the plaintiff could not cure the defect because the defendant by not raising objection in time and by contesting the issue of sub-letting as issue of fact only persuaded the plaintiff to believe that defendant understood that on proving fact as pleaded, of giving premises on rent to third person by the tenant, the plaintiff will be entitled to decree and (7) the ground was not raised before first appellate Court. Above all is the fact that in present

> case, the pleading was not defective at all. Therefore, the judgment relied upon by the learned counsel for the appellants have no application to the facts of this case."

Then, in Narayan Lal Vs. Nana Lal, reported in 1978 WLN(UC)-232, again, this Court was considering question of sufficiency of pleading in a suit filed on the ground of reasonable and bonafide necessity, wherein the pleading taken was, that the plaintiff needed suit shop "badly", and it was held that by this the plaintiff clearly intended to convey that the requirement is reasonable and bonafide. It was also considered, that on the pleadings, the issue of reasonable and bonafide necessity was struck, and when the parties led evidence, the defects if any stood removed. Reference was made to judgment of Hon'ble the Supreme Court in Nagubai Ammal Vs. B. Shama Rao reported in AIR 1956 SC-593, and Siddik Mohammed Shah Vs. Mst. Saran reported in 1930 PC-57, wherein it was held, that "the true scope of this rule is that evidence let in on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue, which was not present to the minds of the parties and on which they had no opportunity of evidence. But the rule has no application where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon, and adduce evidence relating thereto", and following this principle it was held, that

the parties went to trial and adduced evidence on the question as to whether the plaintiffs need the suit shop reasonably and bonafide, and thus the contention was negatived.

In my view, thus, the contention, about absence of pleading necessary particulars, cannot be accepted. The above judgments of this Court, and Hon'ble the Supreme Court, clearly rule, that the pleading as contained in the plaint is sufficient pleading to maintain a suit for eviction on the ground of default, as provided in Section 13(1)(a). Admittedly no objection was ever raised before the learned court below, about the pleading being not sufficient, or about the defendant having suffered any prejudice on that count, much less leading of evidence was ever objected, on the ground of absence of pleading, rather the parties went to trial with full consciousness about the controversy involved, and the defendant led evidence about having tendered the rent by Money Order on 10.10.94, and on that count the defendant to be not liable to be evicted as a defaulter. Thus this contention is negatived.

Coming to the second submission, learned counsel made available for my perusal the judgment dated 31.3.1994, passed in previous Suit No.249/90, and look at that the judgment shows, that therein the decree was passed, holding the plaintiff to be entitled to rent upto 28.2.1994,

and it is not shown on record, that the rent for the month of March, 1994 was also deposited in that suit, therefore, the rent for the month of March, 1994 was also outstanding, and if calculated from that date, with the completion of Month of August, 1994, six months' default was completed. It is a different story that the learned courts below have not believed the story of amount being remitted by money-order, however, for the present purposes, even if it were to be assumed that the money-order was sent on 10.10.1994, still by then six months' default had already been committed.

Thus, I do not find any substantial question of law to be involved in the present appeal. The same is, therefore, dismissed summarily.

At this stage at the request of the learned counsel for the appellant, the appellant is given one years' time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the

appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

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